



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Audio Intelligence Devices

File: B-224159

Date: December 12, 1986

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### DIGEST

1. Sole-source award is improper where, due to contracting agency's failure to adequately consider whether protester's products also will meet its minimum needs, agency fails to show a reasonable basis for its conclusion that only the proposed awardee can provide the required products.
2. Contracting agency failed to comply with the procedural requirements for a sole-source award under the Competition in Contracting Act of 1984 where written justification for the sole-source award lacks an adequate demonstration of the rationale for agency's conclusion that only the proposed awardee can provide the required products.

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### DECISION

Audio Intelligence Devices (AID) protests the award of a sole-source contract to Tactical RF, Inc. under request for proposals (RFP) No. CS-I-86-032, issued by the U.S. Customs Service, Department of the Treasury, for body transmitter/receiver systems. AID contends that the contracting agency improperly determined that the awardee was the only responsible source capable of meeting the agency's needs. We sustain the protest.

On August 4, 1986, the Customs Service published in the Commerce Business Daily (CBD) a notice of its intention to procure four body transmitter/receiver systems on a sole-source basis from Tactical RF, Inc. On August 6, the agency completed its written justification for the sole-source award pursuant to 41 U.S.C. § 253(f) (Supp. III 1985), as added by the Competition in Contracting Act of 1984 (CICA). Customs concluded that a sole-source award to Tactical RF was justified under 41 U.S.C. § 253(c)(1), which authorizes use of other than competitive procedures when the items needed are available from only one responsible source and no other products will satisfy the agency's needs.

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According to the justification, the transmitters are for use by undercover Customs agents and informers and must be easily concealable; in addition, the transmitters and receivers must operate in certain confidential frequencies used by the agency. The justification concludes that no firm except Tactical RF offers both a transmitter and a receiver that operate in the required frequencies. In this regard, the justification specifically notes that AID manufactures a transmitter, but not a receiver, meeting the frequency requirements. In addition, the justification states that "no other manufacturer markets transmitters or receivers which have superior technical specifications or small size of the Tactical RF units which will operate on the confidential frequencies."

In response to the August 4 CBD notice, AID advised Customs by letter dated August 5 that it could provide products meeting the agency's needs. In the product catalog AID submitted for Customs' review, AID specifically offers to modify its existing products or manufacture new products if necessary to meet a customer's special needs.

After examining the descriptive literature furnished by AID, Customs conceded that, contrary to the statement in the justification, both AID and other firms manufacture receivers which operate in the required frequencies. Customs nevertheless concluded that AID's products fail to meet its minimum needs because they do not include certain physical and technical features available from Tactical RF. Specifically, Customs states that the AID receiver that operates in the required frequency range is a two-channel battery-powered model; in comparison, the Tactical RF receiver is a four-channel model operating from multiple power sources, with other superior technical features such as greater sensitivity and selectivity. With regard to the transmitter, Customs states that the AID model which meets the frequency requirements is not as small or as concealable as the Tactical RF model, which is technically superior as well. Customs also states that while AID manufactures a transmitter similar to the Tactical RF model, the AID product does not operate in the required frequency range.

Customs advised AID that its products did not meet the agency's minimum needs by letter dated September 11. Award then was made to Tactical RF on September 15.

We find that Customs has failed to demonstrate a reasonable basis for its conclusion that Tactical RF is the only responsible source for the required products. Specifically, in evaluating AID's products, Customs did not take into account

AID's offer to modify its standard products to operate in the required frequencies; instead, Customs' technical evaluation was limited to those AID products which operate in the required frequencies as a standard feature.<sup>1/</sup> Since Customs did not consider whether other AID products, if adapted to operate in the required frequencies as AID offers, would meet Customs' minimum needs, Customs could not reasonably conclude that only Tactical RF could provide the required products.

We also find that Customs' written justification for the sole-source award was defective. Under CICA, a contracting agency's justification for a sole-source award in part must include a description of the agency's needs and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the contracting agency's reasons for the sole-source award decision. 41 U.S.C. § 253(f)(3)(A), (B). In this case, Customs concedes that its justification is flawed to the extent that the principal rationale relied on for the award--the unavailability from any other source of receivers and transmitters operating in the required frequency ranges--is erroneous.

In addition to the erroneous reference to frequency ranges, the justification contains only a brief statement that "no other manufacturer markets transmitters or receivers which have superior technical specifications or small size of the Tactical RF units which will operate on the confidential frequencies." The justification does not discuss the unique features of the Tactical RF product in any detail, however, and does not indicate whether or why they are necessary to meet Customs' minimum needs. Further, the fact that no other product has "superior technical specifications," as the justification states, does not support Customs' position that no other product offers technical features equivalent to the Tactical RF product.

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<sup>1/</sup> While the contracting officer's report on the protest states without further elaboration that Customs considered "AID's capability of producing or providing acceptable supplies," the technical evaluation memorandum does not discuss in detail whether AID's products, if adapted for the frequency requirements, would meet Customs' needs. Rather, as noted above, the technical memorandum refers to only one AID product, a transmitter, which operates outside the required frequencies; the memorandum merely states that while the AID and Tactical RF products are similar, the AID model does not "match" the technical specifications of the Tactical RF model.

We find that the sole-source award to Tactical RF was improper since Customs has failed to show a reasonable basis for its conclusion that AID's products do not meet its minimum needs. Specifically, there is no indication that Customs' needs would not be met by AID's products modified to operate in the required frequency ranges. Accordingly, since the sole-source award was not justified, we recommend that Customs terminate the contract awarded to Tactical RF and conduct a competitive procurement for the items needed. In addition, since AID has successfully challenged an improper sole-source award, we find that AID is entitled to recover the costs of filing and pursuing the protest. See Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1986); Washington National Arena Limited Partnership, 65 Comp. Gen. 25 (1985), 85-2 CPD ¶ 435.

The protest is sustained.

*for Milton L. Fowler*  
Comptroller General  
of the United States